IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8017 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARIBHAI J DESAI

Versus

STATE OF GUJARAT

B Appearance:

1. Special Civil Application No. 8017 of 1992
MR IS SUPEHIA for the Petitioner.
Mr. K.M.Parikh, ASSTT. GOVERNMENT PLEADER
for Respondent Nos. 1-2.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 19/07/2001

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the order dated 27th April, 1992 and for a direction to the respondents to treat the petitioner in service and as on duty for all purposes and

to pay him all the benefits including salary as if the letter/order dated 27th April, 1992 was not passed.

2. The petitioner was appointed as an Assistant Agricultural Engineer at Jamnagar and he resumed his duties on 15.2.82. Pursuant to the Government resolution dated 13th January, 1983, the petitioner was transferred to Gujarat State Land Development Corporation Ltd., Ahmedabad and consequently, the petitioner was sent on deputation to the Corporation for a period of two years vide office order dated 2nd April, 1983 with effect from 1st February, 1983 with the designation of Field Supervisor (Mechanical). On 18.12.1984, the petitioner went on sanctioned leave for 45 days upto 28th January, 1985. Thereafter, on 24th January, 1985 the petitioner applied for leave without pay from 29.1.1985 to 28.6.1985. Meanwhile, the petitioner was called upon to work as Presiding Officer in the general elections in the month of February, 1985 for four days which he did. The petitioner sent his letter of resignation dated 6th March, 1985 to the respondent no. 2 requesting him to accept the same with effect from 19.12.1984. The petitioner sent a letter by telegram dated 5.4.1985 withdrawing his resignation. On expiry of leave sought for by the petitioner, he went to resume his duties on 29th June, 1985. However, he was not allowed to do so. The petitioner again requested to permit him to resume his duties on 29th August, 1985. By a letter dated 10th September, 1985 the Corporation informed the petitioner to deposit some alleged dues so that his resignation could be accepted. The petitioner informed the Corporation that he had tendered his resignation due to mental instability and the said resignation has already been withdrawn on 5.4.1985. He further requested to allow him to resume his duties. The petitioner was informed by the letter dated 22nd November, 1985 of the department that the petitioner was informed that unless he pays notice pay of Rs.1173/-, no orders could be passed either on the resignation or withdrawal of the resignation application. Hence, the petitioner deposited a sum of Rs.1173/- on 1st October, 1985. Thereafter, the petitioner made several requests to allow him to resume his duties, but he was not permitted to do so. The respondent no.2 rejected the request of the petitioner to resume his duties by a letter dated 14.11.1991. After the receipt of the representation of the petitioner to the Minister of Agriculture, the Minister wrote a letter dated 21st April, 1992 to the respondent no. 2 to allow the application of the petitioner for taking him back in service and to take appropriate action in that behalf.

The respondent no.2 Director of Agriculture, Gujarat State by his letter dated 27th April, 1992 accepted the resignation of the petitioner with effect from 19.12.1984. The petitioner again made a representation dated 4.5.1992 to the respondent no. 2 for taking the petitioner back in service as he had already withdrawn his resignation before it could be accepted, but the department had not responded. Hence, this petition has been filed by the petitioner challenging the order dated 27th April, 1992 and for a direction to the respondents to treat him in continuous service.

3. The order has been passed under the provisions of Rule 33-A of the Bombay Civil Service Rules 1959 which reads as under:

" 33-A(1)(a) A Government servant may at any time resign from the services of the State by giving notice of one month in writing to the appointing authority.

Provided that in case of a temporary servant who has put in service of less than one year, the period of such notice shall be one week.

(b) Nothing in this rule shall affect the provisions of any special contract of service of bond entered into by the Government servant with the Government, or the provisions of any special rules, if any, applicable to him, in respect of the period of notice to be given for resignation from service or payment of any sum by the Government servant, to the Government for premature resignastion by him.

(2) The resignation tendered by a Government servant shall be effective from the date on which it is accepted by the appointing authority, but if it is not accepted before the expiry of the period of notice for resignation to be given by such servant under sub-rule (1) it shall be deemed to have become effective on the date of the expiry of such period, unless the Government servant is informed, before such date, that his resignation has been rejected and of the reasons for such rejection.

Provided that the resignation of a Government servant shall not be rejected except in a case where-

(a) any ascertained or ascertainable amount of

money is found outstanding against him and payment thereof is not made by him within the period mentioned above;

(b) he is under suspension

(c) any departmental inquiry or criminal prosecution is contemplated or pending against him;

(3) A Government servant shall not be relieved from his office, if his resignation is rejected.

(4) Where a Government servant remains absent from duty before his resignation has become effective or if his resignation has been rejected without prior grant of leave for such absence, it shall be lawful for the competent authority to treat his absence as leave without any pay and take disciplinary action against him for unauthorised absence from duty.

(5) Any notice of resignation from service shall not be permitted to be withdrawn after the resignation has become effective, except on exceptional ground or in public interest."

4. The learned counsel for the petitioner submitted that it is clear from the provisions of the aforesaid Rule that the petitioner sent his resignation on 6.2.1985 addressed to the appointing authority and he withdrew the same on 5th April, 1985 before expiry of one month's period which is said to be a notice period in the aforesaid Rule. The resignation dated 6.3.1985 was sought to be made effective from 19.12.1984 which is not contemplated by the Rule since a resignation can be made effective with prospective date. Till November, 1985 the resignation was not forwarded to the appointing authority by the Corporation where the petitioner was working on deputation. The petitioner, time and again requested to resume his duties, but he was not permtted to do so. By a letter dated 27th April, 1992 the resignation of the petitioner was accepted with effect from 19.12.1984. The petitioner had discharged election duties in the month of of February, 1985 and so he could not have been discharged. Therefore, the acceptance of the petitioner's resignation vide letter dated 29th April, 1992 cannot be made effective from 19.12.1984. Hence, the resignation could not have been accepted with retrospective effect. It is also stated by the learned counsel for the petitioner that in the case of Hukumat Rai vs. State reported in 23(1) GLR, 645, this Court has

interpreted the aforesaid Rule 33-A. An employee is entitled to withdraw his resignation before it is accepted or rejected. As the petitioner has already withdrawn his resignation before it was actually received by the appointing authority and the petitioner made several requests to resume his duties, but no response. The petitiner tried to get employment in Municipal Corporation, Jamnagar, but due to certain formalities required from the original parent department of the petitioner, no employment could be granted to the petitioner.

5. On the other hand, the learned Assistant Government Pleader submitted on the basis of the remarks forwarded by the department that the petitioner was appointed on probation for a period of one year and he was posted as Assistant Agricultural Engineer at Jamnagar. Thereafter, he was transferred to Gujarat Land Development Corporation on deputation with effect from 1st February, 1983. The petitioner paid notice pay of Rs.1173/- on 1st October, 1985. As some inquiry was contemplated against him regarding the theft of certain articles, hence after calling upon his explanation from the petitioner, it was decided that there was no fault on the part of the petitioner and the matter was reported by GMDC to Agriculture Department-parent department of the petitioner by a letter dated 23.3.92 informing that no inquiry is contemplated against the petitioner nor any outstanding dues are pending against the petitioner. After receipt of that report, from GMDC, the parent department, the Director of Agriculture accepted the resignation of the petitioner by a letter dated 27th April, 1992.

6. The main contention of the learned counsel for the petitioner is that the petitioner submitted his resignation letter on 6th March, 1985 to be given effect from 19.12.1984 and the rules require one month's notice and the resignation could be accepted after expiry of one month's notice and the resignation could not be given retrospective effect, but it could only be given effect from prospective date. Before expiry of one month's notice the petitioner withdrew his resignation by a letter dated 5.4.1985 and before acceptance of the resignation, the petitioner has a right to withdraw his resignation. But the respondents have committed an error on the face of record in accepting the resignation by a letter dated 27th April, 1982 with effect from 19.12.1984 and that order is vitiated on the ground that the resignation cannot be given effect from the back date. The learned counsel for the petitioner

relied on the decision of the Supreme Court in the case of Balram Gupta vs. Union of India and another reported in AIR 1987, SC, 2354 wherein the Supreme Court has made the following observations :

" But the Court reiterated that there should not be arbitrariness and hostile discrimination in Government's approach to its employees. On behalf of the respondent, it was submitted that a Government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in Raj Kumar vs. Union of India (1968) 3 SCR 857 (AIR 1969 SC 180). There the Court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus. As mentioned hereinbefore the main question was whether the sub-rule (4) of Rjule 48-A was proper. In the view we have taken it is not necessary, in our opinion, to decide whether sub-rule (4) of Rule 48-A was valid or not. It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweetwill and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons."

The learned counsel for the petitioner also relied on the decision of the Supreme Court in the case of J.N.Srivastava vs. Union of India and another reported in AIR 1999, SC, 1571 wherein it has been held as under:

"The net result of this order is that the appellant will have to be treated to be in service till the date of his superannuation which

is said to be somewhere in 1994 when he completed 58 years of age. The respondents authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. "

7. The learned counsel for the petitioner also relied on the judgment of this Court in the case of J.A.Bhatt vs. GSRTC reported in 1998(2) GLR, 1001 in which this Court has observed as under:

" In view of the above discussion, we hold that in view of the letter dated 16.7.1992 the resignation letter sent by the petitioner dated 22.6.1992 stood withdrawn and consequently it was not open for the respondent Corporation to act upon the said letter and to relieve him on 21.7.1992. We therefore, hold that the action of the respondent-Corporation in relieving the petitioner from his service on 21.7.1992 was illegal and improper."

8. On the basis of the aforesaid decisions, he also referred Rule 33-A of Bombay Civil Service Rules, 1959 wherein sub-rule (2) requires that the resignation tendered by a Government servant shall be effective from the date on which it is accepted by the appointing authority, but if it is not accepted before the expiry of the period of notice for resignation to be given by such servant under sub-rule (1) it shall be deemed to have become effective on the date of the expiry of such period, unless the Government servant is informed before such date, that his resignastion has been rejected and of the reasons for such rejection.

The learned counsel for the petitioner emphasised that under Rules, the resignation cannot be given effect unless it has been accepted by the appointing authority and if it is not accepted before expiry of the period of notice, the resignation can be withdrawn by the employee. As such, under the Rules, the petitioner is entitled to withdraw the same.

9. I have carefully considered the contentions of the learned counsel for the parties. This is a case in which the petitioner gave resignation by his letter dated 6th March, 1985 and under the Rules, one

month's notice is required for the resignation. The notice period expires within one month from 6th March, 1985 and the petitioner has withdrawn the resignation by his letter dated 5.4.1985, that is, within a period of one month. Hence, the petitioner is entitled to withdraw his resignation and the respondent authority has committed an error on the face on record in not treating the petitioner in continuous service. Moreover, the petitioner's resignation was accepted on 27th April, 1992 and as such, before acceptance, the petitioner had already withdrawn the resignation. Even no presumption can be raised that the resignation will be given effect unilaterally and automatically. Prior to the acceptance of the resignation by the appropriate authority, the employee concerned is entitled to withdraw the same. So far as the resignation letter of the petitioner given on 6.3.1985 with effect from 19th December 1984 is concerned, the Rule provides that the resignation can be given effect after the notice period. As such, the resignation cannot be given effect with retrospective effect io.e. 19.12.1984. Therefore, the authorities have committed an error in accepting the resignation letter of the petitioner and in not treating him in continuous service. On this point, the petition deserves to be allowed.

10. So far as back wages are concerned, the contention of the learned advocate for the petitioner is that the petitioner is entitled for the back wages from the date i.e. 5.4.85 when he had withdrawn his resignation. While, on the other hand, the learned Assistant Government Pleader contended that the petitioner has paid notice amount on 1.10.85 and so he cannot be reinstated in service. Moreover, he cannot be reinstated prior to 1.10.85. I have considered the contentions of the learned counsel for the parties in this regard. The Division Bench of this Court in the case of N.A.Vasava vs. Chief Refinery Co-ordinator, Indian Oil Corporation Ltd. reported in 1997(2) GLH, 379 has observed that in the case of Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank, AIR 1995, SC, 1953, the Apex Court has observed while considering the dismissal of an officer of the bank which had taken place in the year 1982 and the Apex Court had allowed the petition on 6.2.1995 by directing the bank to reinstaste the petitioner in service but instead of giving arrears of pay which was running into Rs.20 lacs for the period from 1982 to 5.2.1995, the Apex Court had paid only 2.5 per cent of the amount i.e. an amount of Rs.50,000/- only by observing " ..The bank is a nationalised bank and the money belongs to the public. A

huge amount on this scale cannot be paid to anyone for doing no work during this long period just because the bank feels that it has lost confidence in the employee." This Court directed the respondent Indian Oil Corporation to reinstate the appellant-petitioner on or before 21st July 1997 and the petitioner was held to be entitled to get all benefits of reinstatement except actual arrears of salary for the period running between 21st July 1992 and 21st July 1997.

11. Considering the facts and circumstances of the case, this petition deserves to be allowed and is accordingly allowed. The respondents are directed to reinstate the petitioner in service and treat him in continuous service. However, the petitioner is not entitled for the arrears of full back wages for the period from 6.3.85 to 27.4.1992, i.e. 6.3.85 when the petitioner submitted his resignation to 27.4.1992 when the resignation was accepted by the authority concerned, but the in the facts and circumstances of this case, petitioner is entitled for 50% of arrears of pay and salary for the period from 27th April, 1992 till he resumed his duties, in case the petitioner has already superannuated, then till the date of his retirement. The petitioner will also be entitled to all consequential benefits including periodical increments, bonus and continuity of service on account of reinstatement as well as all other retiral benefits including pension, gratuity etc. Rule is made absolute accordingly with no order as to costs. The respondents are directed to comply with this judgment within six weeks from today. Direct servie is permitted.

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